

Introduced by Committee on Environmental Quality (Senators Simitian (Chair), Blakeslee, Hancock, Kehoe, Lowenthal, Pavley, and Strickland)

March 14, 2011

An act to amend Sections 71200, 71201, 71204, 71204.6, 71204.7, 71205, and 71205.3 of the Public Resources Code, relating to ballast water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 935, as introduced, Committee on Environmental Quality. Ballast water.

The Marine Invasive Species Act, which generally applies to all vessels carrying or capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state and to all ballast water and associated sediments taken on a vessel, imposes specified requirements on the master, owner, operator, or person in charge of one of those vessels to minimize the uptake and release of nonindigenous species, including the removal of hull fouling organisms from the hull, piping, propellers, sea chests, and other submerged portions of a vessel on a regular basis, and the cleaning of the ballast tanks regularly to remove fouling organisms. The act defines terms for its purposes.

This bill would define and refer to "biofouling" instead of "hull fouling" as the attachment or association of marine organisms to the "wetted," as defined, instead of "submerged" portion of a vessel or its appurtenances, including, but not limited to, sea chests, propellers, anchors, and associated chains. The bill, instead, would require the master, owner, operator, or person in charge of a vessel arriving at a California port or place to remove biofouling organisms from the hull,

pipings, propellers, sea chests, and other wetted portions of a vessel on a regular basis.

Existing law provides that if an owner or operator of a vessel applies to install an experimental ballast water treatment system and the State Lands Commission approves that application on or before January 1, 2008, the commission would be required deem the system to be in compliance with any future treatment standard adopted for a specified period of years.

This bill would allow that system if the commission approves that application on or before January 1, 2016.

Existing law requires the owner or operator of a vessel to implement specified interim performance standards for the discharge of ballast water.

The bill would instead require a master, owner, operator, or person in charge of a vessel, before discharging ballast water in waters subject to the state's jurisdiction, to conduct ballast water treatment so that the ballast water discharged will contain no more than specified sizes and amounts of organisms.

The bill would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 71200 of the Public Resources Code is
- 2 amended to read:
- 3 71200. Unless the context otherwise requires, the following
- 4 definitions govern the construction of this division:
- 5 (a) "Ballast tank" means a tank or hold on a vessel used for
- 6 carrying ballast water, whether or not the tank or hold was designed
- 7 for that purpose.
- 8 (b) "Ballast water" means water and suspended matter taken on
- 9 board a vessel to control or maintain trim, draft, stability, or stresses
- 10 of the vessel, without regard to the manner in which it is carried.
- 11 (c) "Biofouling" means the attachment or association of marine
- 12 organisms to the wetted portion of a vessel or its appurtenances,
- 13 including, but not limited to, sea chests, propellers, anchors, and
- 14 associated chains.

1 ~~(e)~~

2 (d) “Board” means the State Water Resources Control Board.

3 ~~(d)~~

4 (e) “Coastal waters” means estuarine and ocean waters within
5 200 nautical miles of land or less than 2,000 meters (6,560 feet,
6 1,093 fathoms) deep, and rivers, lakes, or other water bodies
7 navigably connected to the ocean.

8 ~~(e)~~

9 (f) “Commission” means the State Lands Commission.

10 ~~(f)~~

11 (g) “EEZ” means exclusive economic zone, which extends from
12 the baseline of the territorial sea of the United States seaward 200
13 nautical miles.

14 ~~(g)~~

15 (h) “Exchange” means to replace the water in a ballast tank
16 using either of the following methods:

17 (1) “Flow through exchange,” which means to flush out ballast
18 water by pumping three full volumes of mid-ocean water through
19 the tank, continuously displacing water from the tank, to minimize
20 the number of original coastal organisms remaining in the tank.

21 (2) “Empty/refill exchange,” which means to pump out, until
22 the tank is empty or as close to 100 percent empty as is safe to do
23 so, the ballast water taken on in ports, or estuarine or territorial
24 waters, then to refill the tank with mid-ocean waters.

25 ~~(h) “Hull fouling” means the attachment or association of marine~~
26 ~~organisms to the submerged portion of a vessel or its~~
27 ~~appurtenances, including, but not limited to, sea chests, propellers,~~
28 ~~anchors, and associated chains.~~

29 (i) “Mid-ocean waters” means waters that are more than 200
30 nautical miles from land and at least 2,000 meters (6,560 feet,
31 1,093 fathoms) deep.

32 (j) “Nonindigenous species” means any species, including, but
33 not limited to, the seeds, eggs, spores, or other biological material
34 capable of reproducing that species, or any other viable biological
35 material that enters an ecosystem beyond its historic range,
36 including any of those organisms transferred from one country
37 into another.

38 (k) “Pacific Coast Region” means all coastal waters on the
39 Pacific Coast of North America east of 154 degrees W longitude
40 and north of 25 degrees N latitude, exclusive of the Gulf of

1 California. The commission may modify these boundaries through
2 regulation if the proponent for the boundary modification presents
3 substantial scientific evidence that the proposed modification is
4 equally or more effective at preventing the introduction of
5 nonindigenous species through vessel vectors as the boundaries
6 described herein.

7 (l) “Person” means an individual, trust, firm, joint stock
8 company, business concern, or corporation, including, but not
9 limited to, a government corporation, partnership, limited liability
10 company, or association. “Person” also means a city, county, city
11 and county, district, commission, the state, or a department, agency,
12 or political subdivision of the state, an interstate body, or the United
13 States and its agencies and instrumentalities, to the extent permitted
14 by law.

15 (m) “Sediments” means matter settled out of ballast water within
16 a vessel.

17 ~~(n) “Submerged portion of a vessel” means all parts of a vessel’s~~
18 ~~hull and structures that are submerged in water when the vessel is~~
19 ~~loaded to the deepest permissible legal draft.~~

20 ~~(o)–~~

21 (n) “Waters of the state” means surface waters, including saline
22 waters, that are within the boundaries of the state.

23 (o) *“Wetted portion of a vessel” means all parts of a vessel’s*
24 *hull and structures that are either submerged in water when the*
25 *vessel is loaded to the deepest permissible legal draft or associated*
26 *with internal piping structures in contact with water taken onboard.*

27 (p) “Vessel” means a vessel of 300 gross registered tons or
28 more.

29 (q) “Voyage” means any transit by a vessel destined for a
30 California port or place from a port or place outside of the coastal
31 waters of the state.

32 SEC. 2. Section 71201 of the Public Resources Code is
33 amended to read:

34 71201. (a) This division applies to all vessels, United States
35 and foreign, carrying, or capable of carrying, ballast water into the
36 coastal waters of the state after operating outside of the coastal
37 waters of the state, except those vessels described in Section 71202.

38 (b) This division applies to all ballast water and associated
39 sediments taken on a vessel, and to all ~~hull fouling~~ *biofouling*.

1 (c) This division may be known, and may be cited, as the
2 “Marine Invasive Species Act.”

3 (d) The Legislature finds and declares that the purpose of this
4 division is to move the state expeditiously toward elimination of
5 the discharge of nonindigenous species into the waters of the state
6 or into waters that may impact the waters of the state, based on
7 the best available technology economically achievable. This
8 division shall be implemented in accordance with this intent, except
9 as expressly provided by this division.

10 SEC. 3. Section 71204 of the Public Resources Code is
11 amended to read:

12 71204. Subject to Section 71203, the master, owner, operator,
13 or person in charge of a vessel carrying, or capable of carrying,
14 ballast water, that operates in the waters of the state shall do all of
15 the following to minimize the uptake and the release of
16 nonindigenous species:

17 (a) Discharge only the minimal amount of ballast water essential
18 for vessel operations while in the waters of the state.

19 (b) Minimize the discharge or uptake of ballast water in areas
20 within, or that may directly affect, marine sanctuaries, marine
21 preserves, marine parks, or coral reefs.

22 (c) Minimize or avoid uptake of ballast water in all of the
23 following areas and circumstances:

24 (1) Areas known to have infestations or populations of
25 nonindigenous organisms and pathogens.

26 (2) Areas near a sewage outfall.

27 (3) Areas for which the master, owner, operator, or person in
28 charge of a vessel has been informed of the presence of toxic algal
29 blooms.

30 (4) Areas where tidal flushing is known to be poor or in turbid
31 waters.

32 (5) In darkness when bottom-dwelling organisms may rise up
33 in the water column.

34 (6) Areas where sediments have been disturbed, such as near
35 dredging operations or where propellers may have recently stirred
36 up the sediment.

37 (d) Clean the ballast tanks regularly in mid-ocean waters, or
38 under controlled arrangements in port or in drydock, to remove
39 fouling organisms and sediments, and dispose of those organisms
40 and sediments in accordance with local, state, and federal law.

(e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(f) (1) Remove ~~hull fouling~~ *biofouling* organisms from ~~the hull,~~ piping, propellers, sea chests, and other ~~submerged~~ *wetted* portions of a vessel *arriving at a California port or place*, on a regular basis, and dispose of removed substances in accordance with local, state, and federal law.

(2) For purposes of paragraph (1), prior to and until the date that the regulations described in Section 71204.6 are adopted, “regular basis” means any of the following:

(A) No longer than by the date of expiration on the vessel’s full-term Safety Construction Certificate or an extension of that expiration date.

(B) No longer than by the date of expiration of the vessel’s full-term United States Coast Guard Certificate of Inspection or an extension of that expiration date by the United States Coast Guard.

(C) No longer than 60 months since the time of the vessel’s last out-of-water drydocking. The commission may approve a time extension to this period.

(3) Inwater cleaning that is performed on the ~~submerged~~ *wetted* portions of a vessel while in the waters of the state shall be conducted using best available technologies economically achievable, and designed to minimize the release of coating and biological materials, cleaning agents, and byproducts of the cleaning process into the surrounding waters. The cleaning shall be performed in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship’s officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel’s ballast water management plan, on the application of ballast water

1 and sediment management and treatment procedures, as well as
2 procedures described in this section, in order to minimize other
3 releases of nonindigenous species from vessels.

4 SEC. 4. Section 71204.6 of the Public Resources Code is
5 amended to read:

6 71204.6. On or before January 1, 2012, the commission, in
7 consultation with the board, the United States Coast Guard, and a
8 technical advisory group consisting of interested persons including,
9 but not limited to, shipping, port, and environmental conservation
10 representatives, shall develop and adopt regulations governing the
11 management of ~~hull fouling~~ *biofouling* on vessels arriving at a
12 California port or place. The commission shall consider vessel
13 design and voyage duration in developing the regulations. The
14 regulations shall be based on the best available technology
15 economically achievable and shall be designed to protect the waters
16 of the state.

17 SEC. 5. Section 71204.7 of the Public Resources Code is
18 amended to read:

19 71204.7. (a) On or before July 1, 2005, the commission, in
20 consultation with the United States Coast Guard, shall adopt
21 regulations governing the evaluation and approval of shipboard
22 experimental ballast water treatment systems.

23 (b) The regulations shall include criteria for the development
24 of a formal application package to use those systems.

25 (c) (1) If an owner or operator of a vessel applies to install an
26 experimental ballast water treatment system, and the commission
27 approves that application on or before January 1, ~~2008~~ 2016, the
28 commission shall deem the system to be in compliance with any
29 future treatment standard adopted, for a period not to exceed five
30 years from the date that the interim performance standards adopted
31 pursuant to paragraphs (1) and (2) of subdivision (a) of Section
32 71205.3 would apply to that vessel.

33 (2) The commission may rescind its approval of the system at
34 any time if the commission, in consultation with the board and the
35 United States Coast Guard, and after an opportunity for
36 administrative appeal with the executive officer of the commission,
37 determines that the system has not been operated in accordance
38 with conditions in the agreed upon application package, or that
39 there exists a serious deficiency in performance, human safety, or
40 environmental soundness relative to anticipated performance, or

1 that the applicant has failed to provide the commission with
2 required test results and evaluations.

3 (d) The commission shall not approve an experimental ballast
4 water treatment system unless the owner or operator demonstrates
5 that the system has significant potential to improve upon the ability
6 of existing systems to kill, inactivate, or otherwise remove
7 nonindigenous species from ballast water.

8 (e) The commission shall disseminate to the public the test
9 results and evaluations regarding experimental ballast water
10 treatment systems described in this section.

11 SEC. 6. Section 71205 of the Public Resources Code is
12 amended to read:

13 71205. (a) (1) The master, owner, operator, agent, or person
14 in charge of a vessel carrying, or capable of carrying, ballast water,
15 that visits a California port or place, shall provide the information
16 described in subdivision (c) in electronic or written form to the
17 commission upon the vessel's departure from each port or place
18 of call in California.

19 (2) The information described in subdivision (c) shall be
20 submitted using a form developed by the United States Coast
21 Guard.

22 (b) If the information submitted in accordance with this section
23 changes, an amended form shall be submitted to the commission
24 upon the vessel's departure from each port or place of call in
25 California.

26 (c) (1) The master, owner, operator, or person in charge of the
27 vessel shall maintain on board the vessel, in written or electronic
28 form, records that include all of the following information:

29 (A) Vessel information, including all of the following:

30 (i) Name.

31 (ii) International Maritime Organization number or official
32 number if the International Maritime Organization number has not
33 been assigned.

34 (iii) Vessel type.

35 (iv) Owner or operator.

36 (v) Gross tonnage.

37 (vi) Call sign.

38 (vii) Port of registry.

1 (B) Voyage information, including the date and port of arrival,
2 vessel agent, last port and country of call, and next port and country
3 of call.

4 (C) Ballast water information, including the total ballast water
5 capacity, total volume of ballast water on board, total number of
6 ballast water tanks, capacity of each ballast water tank, and total
7 number of ballast water tanks in ballast, using measurements in
8 metric tons (MT) and cubic meters (m³).

9 (D) Ballast water management information, including all of the
10 following:

11 (i) The total number of ballast tanks or holds, the contents of
12 which are to be discharged into the waters of the state or to a
13 reception facility.

14 (ii) If an alternative ballast water management method is used,
15 the number of tanks that were managed using an alternative
16 method, as well as the type of method used.

17 (iii) Whether the vessel has a ballast water management plan
18 and International Maritime Organization guidelines on board, and
19 whether the ballast water management plan is used.

20 (iv) Whether the master, operator, or person in charge of the
21 vessel has claimed a safety exemption pursuant to paragraph (1)
22 of subdivision (b) of Section 71203 for the vessel voyage, and the
23 reason for asserting the applicability of that paragraph.

24 (E) Information on ballast water tanks, the contents of which
25 are to be discharged into the waters of the state or to a reception
26 facility, including all of the following:

27 (i) The origin of ballast water, including the date and location
28 of intake, volume, and temperature. If a tank has been exchanged,
29 the identity of the loading port of the ballast water that was
30 discharged during the exchange.

31 (ii) The date, location, volume, method, thoroughness measured
32 by percentage exchanged if exchange is conducted, and sea height
33 at time of exchange if exchange is conducted, of ballast water
34 exchanged or otherwise managed.

35 (iii) The expected date, location, volume, and salinity of ballast
36 water to be discharged into the waters of the state or a reception
37 facility.

38 (F) Discharge of sediment and, if sediment is to be discharged
39 within the state, the location of the facility where the disposal will
40 take place.

1 (G) Certification of accurate information, that shall include the
2 printed name, title, and signature of the master, owner, operator,
3 person in charge, or responsible officer attesting to the accuracy
4 of the information provided and certifying compliance with the
5 requirements of this division.

6 (H) Changes to previously submitted information.

7 (2) The master, owner, operator, or person in charge of a vessel
8 subject to this subdivision shall retain a signed copy of the
9 information described in this subdivision on board the vessel for
10 two years.

11 (d) The master, owner, operator, or person in charge of a vessel
12 subject to this division shall retain for two years a separate ballast
13 water log outlining ballast water management activities for each
14 ballast water tank on board the vessel and shall make the separate
15 ballast water log available to the commission for inspection and
16 review.

17 (e) (1) The master, owner, operator, agent, or person in charge
18 of a vessel subject to this division shall provide the information
19 described in subdivision (f) in electronic or written form to the
20 commission annually upon request of the commission. The master,
21 owner, operator, agent, or person in charge of the vessel shall
22 submit that information within 60 days of receiving a written or
23 electronic request from the commission. For purposes of this
24 paragraph, the reporting shall begin on January 1, 2008, and
25 continue until the date that the regulations described in Section
26 71204.6 are adopted.

27 (2) (A) The information described in subdivision (f) shall be
28 submitted using a form developed by the commission.

29 (B) The master, owner, operator, or person in charge of a vessel
30 subject to this subdivision shall retain a copy of the form submitted
31 pursuant to this subdivision on board the vessel for two years.

32 (f) The master, owner, operator, agent, or person in charge of
33 a vessel subject to this division shall maintain, in written or
34 electronic form, records that include the following information:

35 (1) (A) Date and location of drydocking events.

36 (B) Whether the vessel in general, and the ~~submerged~~ *wetted*
37 portion of the vessel, sea chests, anchors, and associated chains in
38 particular, were cleaned during a drydocking event.

39 (2) Date and geographic location of all inwater cleaning of the
40 ~~submerged~~ *wetted* portion of the vessel.

1 (3) (A) Date and geographic location of all antifouling paint
2 applications to the vessel.

3 (B) The manufacturer and brand name of the antifouling paint
4 applied to the vessel.

5 (4) Any additional information required by the commission by
6 rule or regulation.

7 (g) (1) The master, owner, operator, agent, or person in charge
8 of a vessel subject to this division that has a ballast water treatment
9 system installed on board that is used to comply with this division
10 and has discharged ballast in waters of the state shall provide to
11 the commission based on a schedule to be developed by the
12 commission, by rule or regulation, in consultation with the advisory
13 panel established in Section 71204.9 and the United States Coast
14 Guard, the following information in electronic or written form:

15 (A) The manufacturer and product name of the ballast water
16 treatment system on board the vessel.

17 (B) If applicable, the name and organization that has approved
18 the ballast water treatment system and the approval or certification
19 number of the ballast water treatment system technology.

20 (C) The number of tanks and the volume of each tank that is
21 managed using the ballast water treatment system and that was
22 discharged in waters of the state.

23 (D) Any additional information required by the commission by
24 rule or regulation.

25 (2) The information required by paragraph (1) shall be provided
26 on a form developed by the commission.

27 (h) The master, owner, operator, agent, or person in charge of
28 a vessel subject to this division that has a ballast water treatment
29 system installed on board that is used to comply with this division
30 shall maintain on board the vessel, in written or electronic form,
31 records, including, but not limited to, all of the following
32 information:

33 (1) Copies of all reports and forms described in subdivision (g),
34 submitted to the commission.

35 (2) Material safety data sheets for all chemicals utilized in
36 conjunction with the ballast water treatment system.

37 (3) System manufacturer's technical guides, publications, and
38 manuals.

39 (4) Ballast water treatment system performance information,
40 which may be incorporated into the ballast log described in

subdivision (d), and includes, at a minimum, all of the following information:

(A) The date, time, and location of the starting and stopping of the system for the purpose of treating ballast water.

(B) System malfunctions or unexpected situations, including problem resolution.

(C) Both scheduled and unscheduled maintenance of the system.

(D) All relevant measures of performance recorded during system operation.

(E) Any additional information required by the commission by rule or regulation.

SEC. 7. Section 71205.3 of the Public Resources Code is amended to read:

71205.3. (a) On or before January 1, 2008, the commission shall adopt regulations that do all of the following:

(1) Except as provided otherwise in Section 71204.7, ~~require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006; before discharging ballast water in waters subject to the jurisdiction of California, the master, owner, operator, or person in charge of a vessel to which this section applies shall conduct ballast water treatment so that ballast water discharged meet all of the following conditions with regard to its contents:~~

(A) *No detectable living organisms that are greater than 50 micrometers in minimum dimension.*

(B) *Less than 0.01 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension.*

(C) *For living organisms that are less than 10 micrometers in minimum dimension all of the following shall apply:*

(i) *Less than 1,000 bacteria per 100 milliliters.*

(ii) *Less than 10,000 viruses per 100 milliliters.*

(iii) *Concentrations of microbes that are all of the following:*

(I) *Less than 126 colony forming units per 100 milliliters of Escherichia coli.*

(II) *Less than 33 colony forming units per 100 milliliters of intestinal enterococci.*

(III) *Less than one colony forming unit per 100 milliliters or one colony forming unit per gram of wet weight of zoological samples of toxigenic *Vibrio cholerae* (serotypes O1 and O139).*

(2) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the following implementation schedule:

Ballast water capacity of vessel	Standards apply to new vessels in this size class constructed on or after:	Standards apply to all other vessels in this size class beginning on:
<1500 metric tons	January 1, 2010	January 1, 2016
1500-5000 metric tons	January 1, 2010	January 1, 2014
>5000 metric tons	January 1, 2012	January 1, 2016

(3) Notwithstanding Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable for all organism size classes by 2020, as approved by the commission on January 26, 2006.

(b) On or before January 1, 2009, for the ~~interim performance~~ standards specified in paragraph (1) of subdivision (a) that have to be complied with in 2010, as specified in paragraph (2) of subdivision (a), and not less than 18 months prior to the scheduled compliance date specified in paragraph (2) of subdivision (a) for each subsequent class and the date for implementation of the final performance standard, as specified in paragraph (3) of subdivision (a), the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

1 SEC. 8. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to ensure the protection of the environment at the earliest
6 possible time, it is necessary that this act take effect immediately.